

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

WISE MEDIA, LLC, a limited liability
company,

BRIAN M. BUCKLEY, individually
and as an officer of WISE MEDIA,
LLC, and

WINSTON J. DELONEY, individually
and as a member of WISE MEDIA,
LLC,

Defendants, and

CONCRETE MARKETING
RESEARCH, LLC, a limited liability
company,

Relief Defendant.

Case No. 1:13-cv-1234-WSD

**STIPULATED ORDER FOR PERMANENT INJUNCTION AND
MONETARY JUDGMENT AGAINST DEFENDANT WINSTON J.
DELONEY AND RELIEF DEFENDANT CONCRETE MARKETING
RESEARCH, LLC**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its
Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”), for

a permanent injunction and other equitable relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). The Commission and Defendant Winston J. Deloney (“Defendant”) and Relief Defendant Concrete Marketing Research, LLC (“Relief Defendant”) stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendant participated in deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, by placing unauthorized charges on consumers’ mobile phone bills in a practice known as “cramming,” and that Relief Defendant has received funds that are traceable to funds obtained from the unfair and deceptive acts and practices at issue and has no legitimate claim to the funds.
3. Defendant and Relief Defendant neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendant and Relief Defendant admit the facts necessary to establish jurisdiction.

4. Defendant and Relief Defendant waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorneys' fees. Defendant and Relief Defendant further waive and release any claims that they may have against the Commission, the Receiver, and their agents that relate to this action.

5. Defendant and Relief Defendant waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

1. **“Asset Freeze Order”** means the Stipulated Supplemental Preliminary Injunction Regarding Asset Freeze, entered April 29, 2013.
2. **“Defendant”** means Winston J. DeLoney.
3. **“Partial Preliminary Injunction Order”** means the Stipulated Temporary Restraining Order with Asset Freeze and Order to Show Cause Why Preliminary Injunction Should Not Issue, and Partial Preliminary Injunction With Receivership and Other Equitable Relief, entered April 19, 2013.
4. **“Person”** means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

5. “**Relief Defendant**” means Concrete Marketing Research, LLC, and its successors and assigns.

ORDER

I. BAN ON PLACING CHARGES ON TELEPHONE BILLS

IT IS ORDERED that Defendant is permanently restrained and enjoined from placing charges on any person’s telephone bill, whether directly or through an intermediary, including by providing any advertising, marketing, financial, or technical assistance to other persons to place charges on any person’s telephone bill.

II. PROHIBITION AGAINST BILLING WITHOUT AUTHORIZATION

IT IS FURTHER ORDERED that Defendant, Defendant’s officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from (a) representing or assisting others in representing, expressly or by implication, that a consumer is obligated to pay any charge for goods or services, or (b) causing or assisting others in causing any charge to be billed to a consumer’s account, unless:

- A. All material terms of the offer for which the charge is billed, including the number and amount of each charge and the account

to which the each charge will be billed, have been disclosed prior to the placement of the charge; and

- B. The consumer previously provided express verifiable agreement to be charged.

III. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of One Hundred and Seventy-Five Thousand, Eight Hundred and Seventeen Dollars and Fifty-One Cents (\$175,817.51) is entered in favor of the Commission against Defendant and Relief Defendant, jointly and severally, except that Relief Defendant's portion of the judgment shall not exceed \$817.51, as equitable monetary relief.

- B. Defendant and Relief Defendant are ordered to pay to the Commission:

1. One Hundred Seventy-Five Thousand Dollars (\$175,000), which, as Defendant and Relief Defendant stipulate, is the amount to be held in escrow by their undersigned counsel for no purpose other than payment to the Commission ("the Payment Escrow"). Payment to the Commission must be made from the Payment Escrow within seven (7) days of entry of this

Order, by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission.

2. The amount of \$817.51, currently held in SunTrust Bank account xxxxxxxxx1375, frozen pursuant the Asset Freeze Order. To effect the surrender of that amount, the Court directs that the entities holding the funds, or their successors, shall, immediately upon receiving notice of this Order, remit the funds to the Commission by certified check(s) or other guaranteed funds payable to the Federal Trade Commission, Financial Management Office, or by wire transfer in accordance with directions provided by counsel for the Commission. To the extent any identified third party cannot comply with this Subsection without the assistance of Defendant or Relief Defendant, such party must, within three (3) business days of receiving this Order, notify Defendant or Relief Defendant and counsel for the Commission of its inability to comply. Such notification shall specify the actions by Defendant or Relief Defendant that are necessary to comply with this Order.

Defendant and Relief Defendant shall immediately complete any action necessary to facilitate the identified third party's ability to timely comply with this Subsection, and the failure of Defendant or Relief Defendant to complete such action within ten (10) days shall be deemed a violation of the Order and interest at the rate prescribed in 28 U.S.C. § 1961 shall immediately begin to accrue.

IV. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

A. Defendant and Relief Defendant relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

C. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the

Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

D. Defendant and Relief Defendant acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendant previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

E. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendant's practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendant and Relief Defendant have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

V. MODIFICATION OF ASSET FREEZE.

IT IS FURTHER ORDERED THAT the asset freeze provisions of Sections I, II, and III of the Asset Freeze Order are hereby modified as follows:

A. Defendant and Relief Defendant are permitted to transfer any monetary assets to the Payment Escrow for payment to the Commission pursuant to Section III.B.1.

B. The entities holding the frozen assets identified in Section III.B.2 or their successors shall be permitted to transfer those funds to the Commission, as directed in Section III.B.2.

C. Upon the completion of all of the Defendant's and Relief Defendant's obligations under Section III.B above, including all payments and asset transfers, Sections I, II, and III of the Asset Freeze Order shall no longer be in effect as to Defendant and Relief Defendant, and Defendant may take possession of any funds that Defendant had previously transferred to the Receiver for placement in escrow, if any.

VI. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether

acting directly or indirectly, are permanently restrained and enjoined from directly or indirectly:

A. failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. Defendant represents that he has provided this redress information to the Commission. If a representative of the Commission requests in writing any information related to redress, Defendant must provide it, in the form prescribed by the Commission, within 14 days;

B. disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, telephone company account, or other financial account), that Defendant obtained prior to entry of this Order in connection with the placement of charges on consumers' phone bills; and

C. failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after receipt of written direction to do so from a representative of the Commission.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

VII. COOPERATION

IT IS FURTHER ORDERED that Defendant must fully cooperate with representatives of the Commission and the Receiver in any investigation or proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint. Defendant must provide truthful and complete information, evidence, and testimony. Defendant must appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative or the Receiver may reasonably request upon 5 days written notice, or other reasonable notice, at such places and times as a Commission representative or the Receiver may designate, without the service of a subpoena.

VIII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendant and Relief Defendant obtain acknowledgments of receipt of this Order:

A. Defendant and Relief Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 4 years after entry of this Order, Defendant and Relief Defendant, for any business that Defendant or Relief Defendant, individually or collectively with Brian M. Buckley or Wise Media, LLC, is the majority owner or controls

directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in billing charges to consumers; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Defendant or Relief Defendant delivered a copy of this Order, Defendant or Relief Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IX. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendant make timely submissions to the Commission:

A. One year after entry of this Order, Defendant must submit a compliance report, sworn under penalty of perjury:

1. Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to

communicate with Defendant; (b) identify all of Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, billing, and sales, and the involvement of Brian M. Buckley or Wise Media, LLC (which Defendant must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which Defendant performs services whether as an employee or otherwise and any entity in which Defendant has any ownership interest; and (c) describe in detail Defendant's involvement in each such business, including title,

role, responsibilities, participation, authority, control, and any ownership.

B. For 20 years after entry of this Order, Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
2. Additionally, Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which Defendant performs services whether as an employee or otherwise and any entity in which Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Wise Media, LLC.

X. RECORDKEEPING

IT IS FURTHER ORDERED that Defendant must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Defendant, for any business that Defendant, individually or

collectively with Brian M. Buckley or Wise Media, LLC, is a majority owner or controls directly or indirectly, must create and retain the following records:

A. accounting records showing the revenues from all goods or services sold and charges to consumers;

B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

C. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

E. all records of any consumer's authorization to be billed or charged for any of Defendant's goods or services.

XI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant's and Relief Defendant's compliance with this Order, including any failure to transfer any assets as required by this Order:

A. Within 14 days of receipt of a written request from a representative of the Commission, Defendant and Relief Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with Defendant or Relief Defendant. Defendant and Relief Defendant must permit representatives of the Commission to interview any employee or other person affiliated with Defendant or Relief Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendant, Relief Defendant, or any individual or entity affiliated with Defendant or Relief Defendant, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

XII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this 21st day of November, 2013.



UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFF:

FEDERAL TRADE COMMISSION

David C. Shonka
Acting General Counsel

_____/s/_____
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Dated: November 20, 2013

FOR DEFENDANTS AND RELIEF DEFENDANT:



Date: 8-9-13

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DEFENDANT WINSTON J. DELONEY



Date: 8-9-13

WINSTON J. DELONEY INDIVIDUALLY

RELIEF DEFENDANT CONCRETE MARKETING RESEARCH, LLC



Date: 8-9-13

WINSTON J. DELONEY
AS AN OFFICER OF CONCRETE MARKETING RESEARCH, LLC